

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

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**No. 165**

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DORA B. HENDRON, ET AL.,

*Petitioners,*

*vs.*

YOUNT-LEE OIL COMPANY, ET AL.

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**BRIEF AND ARGUMENT IN SUPPORT OF PETITION  
FOR WRIT OF CERTIORARI.**

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MAY IT PLEASE THE COURT:

The case is stated in the petition already set out, and it is unnecessary to repeat the same here. If we shall, before coming to the main part of the brief, point out the cardinal error in the decision below, and briefly discuss the effect of the allegations in the bill, which the decision holds did not state grounds for relief that a Federal court could give in a proceedings of this character, it will make for a better understanding of the case and be of aid to the Court in the ultimate decision of the question of whether the writ should issue.

The decision below, *Hendron v. Yount-Lee Oil Company*, 108 F. (2d) 759.

The substance of the decision of the Circuit Court of Appeals is summed in the following excerpts from the opinion:

"This suit was brought \* \* \* to recover 53.½ acres of land, etc. \* \* \*

"Jurisdiction was asserted by reason of sufficient amount involved and diversity of citizenship; and on the ground that certain judgments of the Texas State courts deprived plaintiffs of the equal protection of the laws and due process of law, in violation of the 14th Amendment.

"Jurisdiction based on diversity of citizenship and sufficient amount involved was admitted.

"Defendants pleaded *res adjudicata* and denied that a substantial Federal question was presented for decision.

"Plaintiffs are the sole heirs at law of Z. T. Howard, who in 1904 owned the land in controversy.

"In 1904, the land was sold by the Sheriff of Gregg County, on executions issuing from a justice of the peace court and the District Court, to W. R. Bass. Defendants hold by *mesne* conveyance from Bass.

"In October, 1934, plaintiffs brought suit against defendants in the District Court of Wood County, Texas, to recover the land, alleging the invalidity of the sale on substantially the same grounds as are urged in the suit at bar.

"That suit was decided against them by the district court and on appeal to the Court of Civil Appeals the judgment was affirmed. The Supreme Court of Texas denied a writ of error.

"It is apparent the plea of *res adjudicata* is good unless the judgments of the District Court of Woods County, the Court of Appeals and the Supreme Court of Texas above referred to, are set aside as depriving plaintiffs of due process of law in violation of the 14th Amendment. In the case of *Susie Williams et al. v. Allen Tooke et al.*, — Fed. (2d) —, decided this day, on allegations of unconstitutionality *substantially* the

same as in the case at bar, we had occasion to consider the jurisdiction of a District Court of the United States to set aside a judgment of a state court. On authorities cited therein, we held the District Court was without jurisdiction for want of the presentation of a substantial federal question. On the authority of that case the judgment is affirmed",

Which, we say, clearly demonstrates that said court entertained an erroneous view as to the effect of the allegations of the bill and a misconception of the settled rules of law and equity applicable thereto:

An erroneous view as to the effect of the allegations of the bill and relief sought, because the bill does not seek to *recover* the land, but to *engraft a trust* on the State court judgments because they were the harvest of or result of a fraudulent combine between the State judges and the defendants, respondents herein, and prayed that they be decreed to hold same as trustees and required to account.

An erroneous view of the nature of the State court judgments, because the bill avers, with due particularity, that your petitioners sought therein to redeem the land from the vendees of the purchaser of said land at an alleged void execution sale and offered to do equity.

A misconception of the settled rules of law and equity applicable thereto, because it is well settled by the decision of this Court that where the other conditions of jurisdiction being satisfied, *a District Court of the United States may, without controlling, supervising, or annulling the proceedings of State courts, give such relief as is consistent with the principles of equity*; that is, Federal and equity jurisdiction being present, the District Court may, by its decree, "*lay hold of the parties, and compel them to do what according to the principles of equity they ought to do,*" thereby securing and establishing the rights of which the plaintiffs are alleged to have been deprived by fraud.

Bear in mind that, unquestionably, the lower court had *Federal* jurisdiction by reason of the amount involved and diversity of citizenship, the *controlling* question is, did it also have *equitable* jurisdiction? This question must be determined from the averments of the bill and the relief sought. Let us look to the pertinent portions thereof.

It is alleged with due particularity that plaintiffs are the sole heirs at law of Z. T. Howard, deceased, who prior to April 5, 1904, was seized of the land here involved; that prior to said date, two valid money judgments were rendered against said Howard, one in a justice's court of Wood County, the other in the District Court of said County. Valid executions were issued on said judgments and placed in the hands of the Sheriff of Gregg County for execution. That on April 5, 1904, said sheriff allegedly acting under the authority of said executions, sold and conveyed said land to W. R. Bass, who purchased in good faith and believed he was getting title to the land and whose purchase money was applied on and discharged said two judgments, and respondents hold by *mesne* conveyance under Bass.

It is alleged that in October, 1934, petitioners filed suit in said district court against respondents, in which they sought to redeem said land, contending that said sheriff's sale to Bass under said justice's court execution was void, because said sale was made after the return date of said execution, and also that the sale made under the district court execution was void because said sheriff did not indorse a levy on the land sold (or on any land) on the writ of execution as required by the statutes of Texas, and that said Bass got no title by his purchase, but his purchase money having discharged the judgments under which the land was sold, and he having purchased in good faith, he became subrogated to the judgment creditors' claims, and having entered into possession under said purchase, he was lawfully in possession as an equitable trustee or mortgagee

lawfully in possession with the right to retain such possession until equity was done him (R. 5-18), and that a "take nothing" judgment was entered against them, and they appealed to the Court of Civil Appeals and filed the record therein and their briefs containing their assignments of error (R. 21-32).

#### CONSPIRACY.

The bill avers:

"That after said briefs had been filed as aforesaid, the said appellees and their counsel well knew that under the cold logic of the law each of the aforesaid assignments of error would be sustained and the judgment reversed and rendered for these plaintiffs and that the Supreme Court of Texas would refuse a writ of error therein, and with the intent to defraud these plaintiffs out of their property, then and there conspired, agreed and confederated together to and they did attempt to camouflage the issues in the case, as is hereinafter more specifically shown, so as to form a basis or background upon which the said Court of Civil Appeals apparently could and would affirm the judgment below and the Supreme Court of Texas refuse a writ of error, and thereby and by reason thereof acquire plaintiffs' property without consideration, which as hereinafter shown, they did.

"That as hereinafter shown said appellees filed in said Court of Civil Appeals their counter-propositions in response to these plaintiffs' said assignments of error, as aforesaid, in which they intentionally misstated both fact and law, with the intent aforesaid, and as hereinafter shown the Judges of said Court of Civil Appeals and of the Supreme Court of Texas *connived* at such fraudulent conduct on the part of said appellees and upon their instance and demand ignored the settled rules of law in respect to the admitted facts, and acting solely upon such pretensions and contentions of said appellees, as hereinafter set forth, refused these plaintiffs any relief, and thereby gave

plaintiffs' property to the defendants without consideration'' (R. 72-73).

The bill also avers with due particularity that the appellees in said cause in response to said assignments of error, in furtherance of said conspiracy, filed in said Court of Civil Appeals their counter-propositions in which they intentionally made false and untrue assertions of the facts, and erroneous propositions of law (R. 33-36).

It alleges that said Court of Civil Appeals overruled all of appellants' assignments of error and sustained all of appellees' counter-propositions, and held, in effect, that the sale of the land by the sheriff under said District Court execution passed title, as it was not necessary for the sheriff to indorse a levy on the writ of execution, but, if mistaken in this, then the conveyance by Bass of the land was a repudiation of the relationship of Mortgagor and Mortgagee, and limitations started to run (a copy of the opinion is set forth in the record, p. 37, *et seq.*), and the Supreme Court of Texas denied a writ of error.

The bill sets forth each of the holdings of said Court of Civil Appeals upon which it based its judgment of affirmance with due particularity, conciseness and clarity, and in each instance avers what is due process of law in respect thereto, and points out that each of said holdings is so gross as to be impossible in a rational administration of justice, and that each of said holdings is simply the result of said fraudulent combine between said appellate judges and the defendants, respondents here (R. 48, *et seq.*).

Then the bill avers :

“Plaintiffs aver that they do not contend that the State of Texas, so acting by its aforesaid Judicial departments, committed mere errors of law in respect to the matters aforesaid, but charge that said courts, in so doing, acted fraudulently and with an ‘evil eye and uneven hand,’ and not judicially, and that their afore-

said acts are merely an exercise of arbitrary and capricious power, and in clear conflict with those fundamental principles which have been established in our system of jurisprudence for the protection and enforcement of private rights, and that their said conduct and acts was peculiar to said litigation and contrary to that accorded others similarly situated, and that they deliberately and intentionally awarded plaintiffs' property to the defendants without consideration, and thereby not only deprived them of their property without due process of law, but also denied them the equal protection of the law as heretofore shown, and by reason thereof United States Constitution, 14th Amendment was violated" (R. 70, 71).

The bill further avers :

"Plaintiffs aver that the defendants having obtained the title of plaintiffs' property in the manner hereinbefore set forth, and are holding and claiming same in virtue of the aforesaid judgment of the State Court, should be decreed to hold same as trustees for the plaintiffs, and required to convey same to plaintiffs, and account for the rents and profits of the land since April 5, 1904, less their proper offsets, and plaintiffs now offer to do and perform such equities in respect to the matters aforesaid as this Honorable Court may order and decree" (R. 71).

The prayer is :

"That a trust be engrafted on said judgment in favor of plaintiffs, and that they be permitted to redeem by doing equity" (R. 71).

Is it not too plain for argument that this suit is not for the *recovery* of the land, but seeks to *engraft* a trust on the State court judgment because it was concocted in fraud?

It is obvious, as we said in the petition for rehearing, that the court below misconceived, misapprehended and overlooked the indubitable fact that, although the bill as-

serted *Federal* jurisdiction on the grounds; (a) by reason of amount involved and diversity of citizenship; and (b) by reason of a Federal question; *i. e.*, the State court judgment deprived them of their property without due process of law and denied them the equal protection of the laws in violation of the guarantees of the 14th Amendment to the Constitution of the United States, it also asserted *equity jurisdiction* by reason of the averments that said State court judgments were the result of the corrupt and fraudulent acts of said State appellate judges acting as the alter ego's of the respondents.

It is likewise obvious that the court below overlooked the fact that *fraud* is one of the main-heads of equity jurisprudence.

Moreover, it is certain that the court below was adamant in its opinion that the State court judgment was impregnable on the ground of *res adjudicata*, and that equitable relief could not be granted without annulling said judgment.

Besides, in the State court these petitioners sought to redeem the land from an alleged void execution sale, and in the case at bar they seek to engraft a trust on the judgment entered in that case, and hence, the cases are not the same.

And with this familiarity with the case, and the way it was decided below, we are brought to a consideration of the decisions of *this* Court, and to show, if we can, that each of the reasons assigned in the petition for the writ is sound.

#### DISCUSSION OF AUTHORITIES.

##### *Preliminary Statement.*

The Constitution of the United States and the acts of Congress have conferred upon the Federal District Courts the jurisdiction to hear and determine controversies be-



tween citizens of different States in which the matter in dispute exceeds, exclusive of interest and costs, \$3,000.00 in value. This suit presents such a controversy. It is an original, independent suit for equitable relief between the parties; such relief being grounded upon a new state of facts, disclosing that the State court judgments assailed were the harvest of a conspiracy between the State appellate judges and the respondents to defraud these petitioners out of their property. The District Court of the United States, unquestionably, has jurisdiction of this controversy, and the petitioners have the legal right to a hearing and a decision of the questions which the bill presents, and to the relief which the decision of these questions entitles them. That court may not lawfully renounce that decision. It cannot rightfully deny to the petitioners the right to the decree to which they show themselves entitled. It is not the judgment of the State court against which petitioners complain, it is against the defendants in said judgment. It is against the unconscionable use by these respondents of the judgment which they recovered by corrupting the court which rendered it.

It may be suggested to *this* Court that relief from a judgment tainted with the fraud of the court or judge cannot be had in an independent suit in equity. But the rule seems to be well settled that "corruption of the court" is ground for equitable relief. (See Bigelow on Estoppel (5th Ed.), p. 307; Bigelow on Fraud, Vol. I, p. 88, note; *Little Rock, etc., Ry. Co. v. Wells*, 54 A. S. R. 230; *United States v. Flint* (U. S. Circ. Ct. Cal., Sept., 1876, opinion by Mr. Justice Field); *Newton v. Stokes*, 30 Fed. 891, opinion by Mr. Justice Brewer.)

Mr. Justice Field, in *U. S. v. Flint*, *supra*, speaking on the subject, remarked that such a judgment is "*Fabula, non iudicium*".

The adjudicated situation nearest to the one in the case at bar which we have been able to find is *Newton v. Stokes*, 30 Fed. 891, 892, where suit was filed in the State court by Mrs. Newton and judgment went against her, and afterwards she filed suit in the United States Circuit Court, seeking to set aside the State court judgment upon the ground that said State court judgment against her was obtained by perjury and the corruption and bribery of the judge.

The opinion in that case was written by Mr. Justice David J. Brewer, who was one of the Justices of the Supreme Court of the United States for more than twenty-five years, while sitting as a circuit judge. He said:

“The matter which, of course, first arrests the attention, is that of the alleged corruption and bribery of the judge of the superior court; for, if these grave charges are true, not only would the judge himself receive the just condemnation of every honest man, *but in every court the judgment which he had sought by his wrong to lift up as a barrier to truth and justice would be wholly disregarded.*” (Italics ours.)

As said by Mr. Justice Bradley, in *Graffam v. Burgess*, 117 U. S. 180, 186:

“It is insisted that the proceedings were all conducted according to the forms of law. Very likely. Some of the most atrocious frauds are committed in that way. Indeed, the greater the fraud intended, the more particular the parties to it often are to proceed according to the strictest forms of law.”

Indeed, the fraud of a judge can rarely occur without a conspiracy between the judge and the party benefited.

In a note to *Little Rock, etc. Ry. Co. v. Wells*, 54 A. S. R. p. 230, it is said:

“If there is fraud on the part of the court or judge, there seems to be no reason *why it does not constitute*

as complete a ground for relief as if the prevailing party had been guilty thereof. Such fraud can rarely occur without a conspiracy between the judge and party benefitted, and, even if there be not such conspiracy in the beginning, the party benefitted ought to be regarded as joining therein when, being informed thereof, he seeks to retain the advantage." (Italics ours.)

Now, we say, it has been conclusively shown; (a) that the court below had Federal jurisdiction by reason of amount involved and diversity of citizenship, (b) that the suit filed in the State court did not seek to recover the land, but sought to redeem the land from a void execution sale, (c) that this suit did not seek to recover the land, but sought to engraft a trust on the judgment entered in the State court by reason of the fraud of the judges and respondents, and (d) that such fraud constitutes a complete ground for equitable relief. We now reach the question, did the court below have jurisdiction to grant to petitioners the relief sought without setting aside the State court judgment?

This identical question has been settled by this Court in *Arrowsmith v. Gleason*, 129 U. S. 86, 9 Sup. Ct. 237, where certain lands in Ohio, inherited by plaintiff, were sold by his guardian, under orders therefor regularly obtained by the guardian from the proper probate court, and the sales were held in due form and regularly confirmed by such court. The bill attacked the order of sale as invalid, prayed the guardian's deeds thereunder be declared void, and demanded an accounting at the hand of the guardian for rents and profits. The gist of the grounds for such relief is alleged to be the fraud of the guardian. This suit was brought in the United States Circuit Court, which sustained demurrer to the bill and dismissed the suit. In the brief of counsel for appellee (page 92, 129 U. S.), counsel, while not denying "the right of courts of general jurisdiction to set aside their own judgments and decrees on bills

of review, for errors apparent on the record, or original bills in the nature of bills of review, for fraud in obtaining the judgments or decrees, where such bills are part of the recognized practice of courts", specifically presented and urged that "the Circuit Court of the United States has no power to grant the specific prayer of the bill, and set aside and vacate the orders of the probate court of Defiance County, and declare the same void and of no effect." With reference to this point this Court says (page 99, 129 U. S.):

"While there are general expressions in some cases apparently asserting a contrary doctrine, the late decisions of this Court show that the proper Circuit Court of the United States may, without controlling or annulling the proceedings of State courts, give such relief, in a case like the one before us, as is consistent with the principles of equity."

And as said by Circuit Judge Taft (afterwards Chief Justice of this Court) in *Rhino v. Emery*, 72 Fed. 382, 386:

"More than this, the validity of the probate proceedings is attacked for fraud, and the jurisdiction of a Federal Court of Equity to compel restoration of lands or proceeds fraudulently acquired by such proceedings is clear. *Arrowsmith v. Gleason*, 129 U. S. 87, 9 Sup. Ct. 237. *A Federal Court of Equity where other necessary jurisdictional facts are present, has the right, without directly setting aside the proceedings in the State Court in which the sale is made, to lay its hands upon the guilty parties committing the fraud, and to hold them as trustees, for the defrauded one, to account for the proceeds of the action conceived and carried on in fraud.*"

Authorities on the question could be multiplied, but we deem it unnecessary to cite others.

*Rooker v. Fidelity Trust Co.*, 263 U. S. 413.

It will be observed that the Circuit Court of Appeals cited the above case as authority for its holding that relief could

not be granted appellants *without setting aside the State Court judgments*. But nothing in that case is contrary to the principles for which we contend nor denies their application to the present case. There was no claim in that case that the judgment assailed was concocted by the fraud of the court or judge, hence that case has not the features which determines this.

So, we submit, these principles announced by this Court in *Arrowsmith v. Gleason, supra*, control the case at bar, which, although involving rights arising under judicial proceedings in a State court, is an original, independent suit for equitable relief between the parties; such relief being grounded upon the corrupt acts of the appellate judges, and as this case is within the equity jurisdiction of the District Court, as defined by the Constitution and laws of the United States, that court may, without annulling the State court judgment, lay hold of the parties and compel them to do what according to the principles of equity they ought to do, thereby securing and establishing the rights of which the petitioners are alleged to have been deprived by fraud and collusion, and that the decision of the Court below being contrary to these settled rules the writ should issue.

Respectfully submitted,

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